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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/526,416	03/02/2005	Matthew M Terry	3053.136.US	3094

26474 7590 02/29/2008  
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EXAMINER
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JOHNSON, STEPHEN

ART UNIT	PAPER NUMBER
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3641

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02/29/2008

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.



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FEB 29 2008

TECHNOLOGY CENTER 3600

NOVAK DRUCE DELUCA & QUIGG LLP  
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SUITE 1000 WEST TOWER  
WASHINGTON DC 20005

In re Application of	:	
Matthew M. TERRY	:	DECISION ON PETITION
Application No. 10/526,416	:	TO REVIEW RESTRICTION
Filed: March 2, 2005	:	REQUIREMENT UNDER
For: BLAST AND BALLISTIC PROTECTION	:	37 CFR 1.144
SYSTEMS AND METHODS OF	:	
MAKING SAME	:	

This is in response to the petition filed on February 1, 2008 for withdrawal of the restriction requirement mailed on March 2, 2006.

The petition is **DISMISSED**.

FACTS

On March 2006, the examiner made a requirement for an election of species.

On May 1, 2006, applicant filed an election and identified claims directed to that election. It is noted that the applicant did not provide any argument traversing the requirement.

On May 11, 2006, the examiner mailed a non-final office action withdrawing claims originally identified as being directed to the non-elected groups. The claims at question are 10-14 and 15/(1-6). It is noted that claim 15/7 was not withdrawn. The examiner further noted that a specific feature of claim 12 was not in the elected embodiment. It is noted that claims 13 and 14 depend from claim 12.

On October 13, 2006, applicant amended the specification to apparently provide support for claim 12 in the elected embodiment.

On March 20, 2007, the examiner mailed a second non-final action which included rejections of claims 12-14. The examiner indicated that claims 10-11 and 15 were withdrawn since the features of the claims were not shown in the elected embodiment. Specifically, the examiner indicated that the elected embodiment does not disclose leg members or an open cell foam as claimed.

In a response filed July 22, 2007, applicant requests reinstatement of claims 10, 11 and 15 by merely referring to figure 4.

On October 1, 2007, the examiner made the election of species final and indicated that "nothing in figure 4 has been described as a leg member nor are leg members necessarily inherent to truss unit 26 as disclosed by applicant".

On February 1, 2008, the instant petition was filed. In this petition, applicant provides a marked up copy of figure 4 with an arrow pointing generally to the truss structure as "leg members" and an arrow pointing to the bottom layer as "open cell foam".

#### DISCUSSION

Upon reviewing the specification, no mention of leg members (claim 10), the leg members being solid or hollow or a combination thereof (claim 11) or an open cell having hollow or solid ligaments or combinations thereof (claim 15) have been found with respect to figure 4. Furthermore, a text search of the pre-grant publication of this application failed to find the terms "leg" or "ligaments" anywhere but the above mentioned claims.

The examiner had pointed out that the truss member of figure 4, does not inherently imply that leg members are present. Applicant has not contested this argument. The fact that applicant points to the truss member for support of the legs does not aid in determining what specifically is being considered a "leg". Also, the presentation of claim 8 directed to just a truss member and the further limitation of claim 10 of a leg within the truss member implies that the truss member being claimed does not inherently require legs. Furthermore, hollow or solid legs or ligaments are simply not disclosed nor supported in the elected embodiment.

#### DECISION

Other than pointing to figure 4, applicant has not provided any arguments supporting the claim that the features of the claims at question are present in the elected embodiment.

Applicants petition is DISMISSED.

Any question concerning this decision should be referred to SPE Michael Carone at 571-272-6873.



Donald Hajec  
Director, TC 3600

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